

**CITY OF MORGAN HILL  
JOINT SPECIAL AND REGULAR CITY COUNCIL  
AND SPECIAL REDEVELOPMENT AGENCY MEETING  
MINUTES – OCTOBER 5, 2005**

**CALL TO ORDER**

Mayor/Chairman Kennedy called the special meeting to order at 6:01 p.m.

**ROLL CALL ATTENDANCE**

Present: Council/Agency Members Carr, Grzan, Sellers, and Mayor/Chairman Kennedy  
Late: Mayor Pro Tempore/Vice Chair Tate (arrived at 6:03 p.m.)

**DECLARATION OF POSTING OF AGENDA**

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

***City Council and Redevelopment Agency Action***

**CLOSED SESSIONS:**

Interim City Attorney/Agency Counsel Siegel announced the below listed closed session items:

**1.**

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Authority: Government Code Sections 54956.9(b) & (c)  
Number of Potential Cases: 3

**2.**

**CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

Authority: Government Code Section 54956.9(a)  
Case Name: General Lighting Service, Inc. v. Wells Construction Group, et al.  
[Consolidated Actions]  
Case Number: Santa Clara County Superior Court, Lead Case No. 1-04-CV-025561

**3.**

**CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Authority: Government Code 54956.8  
Property: 17440 Monterey Road, APN: 726-14-028  
Negotiating Parties: City Manager, Director of Business Assistance & Housing Services,  
City Attorney  
Closed Session Topic/Under Negotiation: Price and Terms of Payment

**OPPORTUNITY FOR PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

### **ADJOURN TO CLOSED SESSION**

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 6:03 p.m.

### **RECONVENE**

Mayor/Chairman Kennedy reconvened the meeting at 7:07 p.m.

### **CLOSED SESSION ANNOUNCEMENT**

Interim City Attorney/Agency Counsel Siegel announced that the City Council met in closed session on items 2 and 3 as listed on the agenda and gave direction to the representatives to negotiate. He indicated that there was no other reportable action taken in closed session.

### **SILENT INVOCATION**

### **PLEDGE OF ALLEGIANCE**

### **PROCLAMATION**

Mayor Kennedy presented Roger Beaulieu and Ray Jimenez, representatives of the Teachers Aid Coalition (TAC), with a proclamation, proclaiming *TAC a Valuable Resource for Morgan Hill Educators*. It was announced that the next annual fall school supplies give away will take place on Thursday, October 13, 2005 at 3:00 p.m. at the Morgan Hill Unified District Warehouse located on Tilton Avenue. Mr. Beaulieu announced that TAC will be hosting a Holiday Wine Tasting fundraising event at Clos LeChance on October 27, 2005 with the proceeds to be used to purchase classroom supplies.

### **RECOGNITIONS**

Mayor Kennedy presented a Certificate of Recognition to Teresa Alvarado, PG&E Company, proclaiming October 10, 2005 as *Pacific Gas and Electric Company's Centennial Anniversary*.

### **CITY COUNCIL REPORT**

Mayor Pro Tempore Tate reported that the Council held a retreat last Friday afternoon. He indicated that the Council reviewed the status of the policies and goals established in January 2005. The Council reviewed adopted goals, and had an opportunity to update the goals. The Council also reviewed its committee structure implemented at the January 2005 retreat. The Council looked at what was working/not working in the committee system. He stated that the Council disclosed insights on what it can do to improve the committee system. He stated that the results of the afternoon retreat was beneficial and gives the Council an advantage in terms of going into its January retreat to set goals for 2006. He felt the Council is ahead in setting its direction for the City and that the retreat resulted in a positive experience. He indicated that he serves as chair to the Financial Policy Committee. He stated that this Committee has a single focus at this time; the Community Conversation. He indicated that it is

proposed to commence the conversation in November 2005. The City will conduct preliminary education on what the process will entail. He stated that the idea of the community conversation is to advise citizens that the City is spending more than it is bringing in, in terms of revenue. He said the City would like to have a conversation with the residents of the community to determine how this problem is to be fixed. He also serves on the Public Safety and Community Services Committee. This Committee's recent emphasis has been on the indoor recreation center and its operational model; including who is to be the operator of the center. It was his belief that within the next 30 days, the Committee will return with recommendations to the Council on the indoor recreation center.

### **CITY MANAGER REPORT**

City Manager Tewes indicated that he did not have a special report to present this evening.

### **CITY ATTORNEY REPORT**

Interim City Attorney Siegel stated that he did not have a report to present this evening.

### **OTHER REPORTS**

Council Member Sellers announced that his son turned 16 years old today and wished him a happy birthday.

### **PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda.

Dan Craig indicated that the Downtown Association offered to make periodic updates on what is taking place in the downtown. He announced that at the heels of the successful Taste of Morgan Hill, the next downtown event is the annual Safe Trick or Treat to be held on Monday, October 31 from 5-7 p.m. He indicated that some downtown streets will be closed for this event. He thanked the sponsors of the event. In November, the Poppy Jasper Film Festival will be held at the Granada Theater. He stated that the Chamber of Commerce and the Downtown Association have pulled funds together to make the minor renovations necessary to allow this event to move forward. He said the Downtown Association is looking forward to the opening of Poppy's Fresh Seafood and Poultry Market to be located at 30 East Third Street. It is anticipated that the business will open in November, in time for the holidays. He noted that there are a rare number of vacancies occurring in the downtown. However, in each of these instances, there has been a lot of interest in activity between potential tenants and property owners. It was his belief that these buildings would not be vacant long and that he would be announcing the businesses that will open at the various locations soon. It was his understanding that several downtown housing units have been submitted under the City's Measure C competition, vying for downtown set asides. He felt that this speaks to investors' confidence in the housing market.

Mayor Pro Tempore Tate addressed the Council as a member of the public, announcing that Leadership Morgan Hill is accepting applications for the Class of 2006. He invited individuals interested in

Leadership Morgan Hill to attend an informational session to be held on Monday, October 24 at 5:30 p.m. at the Morgan Hill House/Villa Mira Monte located on Monterey Road. He encouraged individuals to submit applications; indicating that applications can be downloaded or obtained at the informational session.

Mayor Kennedy announced that the Morgan Hill Dayworkers Committee will be holding a fundraising event this Saturday at 5:30 p.m. at St. Catherine's Hall.

No further comments were offered.

## ***City Council Action***

### **CONSENT CALENDAR:**

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1-10, as follows:*

1.        **REJECTION OF BID FOR THE BUTTERFIELD WELL PUMP STATION PROJECT**  
***Action:** 1) **Rejected** the Bid Received on September 28, 2005 for the Construction of the Butterfield Well Pump Station; and 2) **Authorized** Staff to Re-bid the Project.*
2.        **POLICY RECOMMENDATIONS FROM THE UTILITIES AND ENVIRONMENT SUBCOMMITTEE ON LEGISLATION**  
***Action:** **Took No Action** on Proposition 80 and the Video Choice Act of 2005.*
3.        **CONTRACT FOR MICROFICHE CONVERSION SERVICES**  
***Action:** **Awarded** Contract for the Conversion of all Microfiche Archives to Electronic Images to Convert-A-Doc in the Amount of \$56,324.45, Subject to Review and Approval by City Attorney.*
4.        **PURCHASE ORDER FOR EQUIPMENT FOR THE NEW POLICE FACILITY**  
***Action:** **Authorized** the City Manager to Approve a Purchase Order in the Amount of \$6,000 to Verizon Telephone Company for the Additional Cost of the Installation of Upgraded Phone Equipment and the Transference of Equipment from the Old Police Facility to the New Police Facility.*
5.        **LABOR CONTRACT WITH AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES (AFSCME) LOCAL 101**  
***Action:** **Approved** Three-Year Memorandum of Understanding with the American Federation of State, County and Municipal Employees (AFSCME) Local 101.*
6.        **LABOR CONTRACT WITH MORGAN HILL COMMUNITY SERVICE OFFICER ASSOCIATION (CSOA)**  
***Action:** **Approved** Three-Year Memorandum of Understanding with the Morgan Hill Community Service Officer Association (CSOA).*

7. **ORGANIZATION OF THE RECREATION AND COMMUNITY SERVICES DEPARTMENT**  
**Action:** 1) **Authorized** the Position of “Director of Recreation and Community Services”; and  
2) **Directed** the City Manager to Submit Recommendations on Any Other Changes that May be Appropriate Within 90 Days.
8. **CITY COUNCIL SPECIAL MEETING NOTES, SEPTEMBER 8, 2005**  
**Action:** **Received**, Information Only; No Action Required.
9. **CITY COUNCIL SPECIAL MEETING MINUTES OF SEPTEMBER 21, 2005**  
**Action:** **Approved** as submitted.
10. **SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF SEPTEMBER 21, 2005**  
**Action:** **Approved** as submitted.

### ***City Council Action (Continued)***

#### **CONSENT CALENDAR:**

Council Member Sellers requested that item 11 be removed from the Consent Calendar as he would be recusing himself from this item. He excused himself from the Dais.

**Action:** On a motion by Mayor Pro Tempore Tate and seconded by Council Member Grzan, the City Council, on a 4-0 vote with Council Member Sellers absent, **Approved** Consent Calendar Item 11, as follows:

11. **EMERGENCY EXPENDITURE FOR STORM LINE REPAIR ON EAST CENTRAL AVENUE – Resolution No. 5949**  
**Action:** 1) **Adopted** Resolution No. 5949, Declaring the Need for an Emergency Expenditure for Storm Line Repair on East Central Avenue; and 2) **Approved** Payment in the Amount of \$12,654 for the Emergency Work.

### ***City Council Action***

#### **PUBLIC HEARINGS:**

12. **GENERAL PLAN AMENDMENT, GPA-05-03 AND PREZONING APPLICATION, ZA-05-10; CONDIT ROAD-KUBO – Resolution No. 5950 and Ordinance No. 1739, New Series**

Planning Manager Rowe presented the request to amend the general plan land use designation from office industrial to commercial, prezoning the area to Planned Unit Development, and the approval of a negative declaration on approximately 20 acres of land located between Highway 101 and Condit Road,

south of Diana Avenue. He informed the Council that the Planning Commission voted 6-0 to recommend approval of the general plan, rezoning and negative declaration on September 27, 2005.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Mayor Kennedy stated that he would be abstaining from these particular actions based on prior statements he made with respect to this property.

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council, on a 4-0-1 vote with Mayor Kennedy abstaining, **Approved** the Negative Declaration.*

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council, on a 4-0-1 vote with Mayor Kennedy abstaining, **Adopted** Resolution No. 5950, Approving General Plan Amendment.*

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council, on a 4-0-1 vote with Mayor Kennedy abstaining, **Waived** the Reading in Full of Ordinance No. 1739, New Series, Pre-zoning the area PUD.*

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1739, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL PRE-ZONING 19.87 ACRES FROM COUNTY OF SANTA CLARA AGRICULTURAL ZONING (A-20) TO PLANNED UNIT DEVELOPMENT (PUD) ZA-05-10: CONDIT-KUBO (APN 728-17-011, -024, -025), by the following roll call vote: AYES: Carr, Grzan, Sellers, Tate; NOES: None; ABSTAIN: Kennedy; ABSENT: None.***

**13.    GENERAL PLAN AMENDMENT APPLICATION, GPA-04-09/ZONING AMENDMENT, ZA-05-01: MONTEREY-ALCINI; AND GENERAL PLAN AMENDMENT GPA-04-10: E. DUNNE-BASANTY – Resolution Nos. 5951 and 5952; Ordinance No. 1740, New Series**

Planning Manager Rowe presented the request to amend the general plan land use diagram on two parcels currently designated as light industrial. He informed the Council that the applicant is requesting that the general plan land use designation be changed to mixed use to allow the opportunity to extend the downtown mixed use zoning district south to the site. With respect to the Alcini parcel, there is a request to amend the general plan land use designation from commercial to mixed use as there is a proposal to place a vertical mixed use project submitted as part of a Measure C project this week. He informed the Council that the Planning Commission reviewed the two applications and the intervening lands. The Planning Commission determined that there is a pattern of mixed use within the area and that it made sense to extend the study area for the environmental review to encompass other sites. Therefore, 29 parcels, comprising of approximately 13.25 acres are being recommended as a City initiated expansion of the area to extend the mixed use designation from East Dunne area south to Bisceglia, between Monterey and Church and east to the Union Pacific Railroad. He indicated that the proposed

extension of the designation would be consistent with General Plan land use policies 13d, 13f, and 13l as these policies call for the City to continue the downtown streetscape and pedestrian oriented design theme along Monterey Road, for at least a block; extending it east toward Butterfield Boulevard.

Planning Manager Rowe informed the Council that the Planning Commission, at their September 27 meeting, voted 5-1 to recommend approval of the combined area, but voted 2-4 (4 no votes) to recommend extension of the zoning amendment that would recommend approval of the zoning to extend the central commercial district further south. This recommendation is based on a prior Council decision to extend the waiver of the guest parking requirements for the downtown, the recommendation contained in the Downtown Plan to eliminate the guest parking requirements for residential uses, and to eliminate the on site parking requirements for commercial uses. He stated that the Planning Commission expressed concern that the City lacks public parking facilities in this area and that there may be a need for guest parking. There was concern expressed about three-story buildings adjacent to existing residential development. He said that it was noted, at the Planning Commission meeting, that a three-story height is currently allowed for portions of property fronting Monterey Road zoned general commercial and a 50-foot height limitation is currently allowed on the site designated industrial. He indicated that the recommended actions before the Council are: 1) to conduct the public hearings, and 2) approve the mitigated negative declaration, followed by the approval of the resolutions amending the general plan for the two sites. The Council would then conduct a public hearing on the zoning amendment application.

Mayor Kennedy opened the public hearing for GPA-04-09: Alcini and GPA-04-10: Basanty.

Vince Burgos, Development Process Consultant, representing the Alcini family, informed the Council that the Alcini family submitted an application to conform to the request and the wishes of the Council when the downtown area was extended to Bisceglia Avenue. He stated that the Alcini family has submitted a Measure C application for a vertical mixed use project and that the vertical mixed use project proposes to incorporate guest parking.

Mayor Kennedy said that it was his understanding that the guest parking requirement is being met by both applications.

Mr. Burgos responded that the Alcini vertical mixed use project exceeds the guest parking requirement.

Robert Basanty requested that the zoning amendment application be approved so that the property can conform to the general plan application submitted. He stated that he proposes more than the adequate parking spaces required. He indicated that he proposes to construct a three story building with the first story to accommodate 18 retail spaces; and that the second and third floors would accommodate 18 apartment units on each floor for a total of 36 apartment units. He proposes to provide 99 retail parking spaces, 32 garage parking spaces and 48 guest parking spaces; for a total of 179 parking stalls and accommodates handicap parking spaces.

No further comments being offered, the public hearing was closed.

Mayor Kennedy disclosed that he spoke with Mr. Alcini and Mr. Basanty prior to the meeting to address the guest parking requirements.

Council Member Sellers inquired what impacts would occur to the Measure C applications should the Council not approve the zoning amendment designation request to CC-R.

Planning Manager Rowe said that the Planning Commission recommends the Council apply the mixed use land use designation to the site. However, the conforming zoning to this designation would be a CC-R district. Should the Council leave the designation as mixed use, the zoning would not conform to the Measure C application. This would make the Alcini application ineligible to participate in the upcoming Measure C competition.

In response to Council Member Carr's question, Planning Manager Rowe felt the main concern of the Planning Commission dealt with their objection to waiving residential guest parking. He noted that the downtown has public parking facilities available. However, north of Main and south of Dunne Avenue, there are no public parking facilities available. This has been a stated concern of the Planning Commission. He informed the Council that a planning commissioner had a concern regarding the three-story height on interior areas. The commissioner expressed concern that once you extend a three-story structure in an older industrial area, there may be an incentive to add additional mixed use. As you begin to concentrate this type of development in this area, it would take away from the immediate core of the downtown area. The Planning Commission supported a change in land use because it made sense. However, Commissioner Mueller expressed concern that this may serve as a catalyst to further expand mixed use into South County Industrial park. He informed the Council that the four Commission members voting not to recommend the zone change stated their concerns of waiving the guest parking requirements of the CC-R zoning district.

In response to Mayor Kennedy's question as to where these projects are in the Measure C process, Planning Manager Rowe indicated that Mr. Basanty did not file an application for this year's competition. However, Mr. Basanty has shown the Council conceptual plans for next year's application. He indicated that Mr. Alcini filed a Measure C application on Monday and that staff is required, under Measure C, to review each application for consistency with general plan and zoning. The review needs to be concluded within 15 days upon receipt of applications. He said that in order to complete the 15-day review period, the Council needs to take action on the general plan and zoning amendment applications this evening. Should the Council not approve the actions this evening, the Alcini's Measure C application would be returned.

Interim City Attorney Siegel said that the issues in front of the Council, under this public hearing, are the mitigated negative declaration and the adoption of the two general plan amendments. Assuming the mitigated negative declaration is approved, the Council would open a second public hearing on the zoning matter. He indicated the Council may wish to separate its discussions on these issues. If the mitigated declaration is not approved, the Council does not need to proceed with the zoning application.

**Action:**      *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** the Mitigated Negative Declaration.*



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**Action:**      *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5951, Approving the General Plan Amendment for Alcini.*

**Action:**      *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5952, Approving the General Plan Amendment for Basanty.*

Mayor Kennedy opened the public hearing for application ZA-05-01: Monterey-Alcini. No comments being offered, the public hearing was closed.

Interim City Attorney Siegel stated that staff will include the comments from the first public hearing made by the two applicants as to the specifics relating to the zoning amendment application.

Planning Manager Rowe clarified that Mr. Alcini was the original applicant under the zoning amendment application. However, the zoning area has been expanded to encompass the intervening parcels. He said that it was staff's expectation that Mr. Basanty was also going to file an application this year. However, Mr. Basanty concluded that he did not have enough time to get his application ready to submit to the City, therefore, he did not file a zoning amendment application.

Council Member Sellers said that in reviewing the application, he felt it was an extension of a philosophical difference he has with the Planning Commission with regard to this particular issue. Although the parking waiver could have been potentially significant were it not for the evidence presented this evening, he felt the parking concern has been mitigated because the market would require parking spaces. Further, the Council has had the advantage of receiving a preliminary list of Measure C applicants submitting housing proposals today. He felt this was an impressive list, a cause for optimism, and that the Council's efforts to extend housing opportunities in the downtown have been successful. He said that in order for housing to impact the downtown area positively, it does not necessarily need to be located between Main and Dunne Avenues, off Monterey Road. He recommended the City encourage high density within this area as it makes sense to proceed with this type of development. He felt the concerns of the Planning Commission have been largely mitigated, and that the benefits to the community, in the long term, far exceed these concerns.

Mayor Pro Tempore Tate stated his agreement with the concern of the Planning Commission with regards to parking, but does not agree with their concern on the height of the buildings. He inquired whether the Council can approve the zoning amendment application with an asterisk to the CC-R zoning district that would require parking, or a way to codify what has been done.

Interim City Attorney Siegel indicated that the Council would end up having different zoning districts with separate requirements. This procedure would not allow the Alcini property to proceed in this Measure C competition.

Mayor Kennedy shared Mayor Pro Tempore Tate's concern and suggested that the Council make a strong statement that it requests these properties include guest parking as indicated by the property owners. With the comments as expressed by Council Member Sellers, he felt these projects fit the goals

of what the Council is trying to accomplish with the downtown vertical mixed use, and furthers the goal of making the downtown alive and vital. He stated his support of these projects.

**Action:** *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1740, New Series, Extending the CC-R Zoning District South of Dunne Avenue.*

**Action:** *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1740, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING THE ZONING DESIGNATION FROM ML, LIGHT INDUSTRIAL, R-2 (3500) RESIDENTIAL AND CG, GENERAL COMMERCIAL TO CC-R, CENTRAL COMMERCIAL/RESIDENTIAL FOR TWENTY-NINE PARCELS TOTALING 13.25 ACRES LOCATED AT THE SOUTHEAST CORNER OF EAST DUNNE AVENUE AND CHURCH STREET AND SOUTH SIDE OF EAST DUNNE AVENUE BETWEEN MONTEREY ROAD AND CHURCH STREET NORTH OF BISCEGLIA AVENUE. (APNS 817-01-018 thru 022, 026, 031 thru 039, 045, 046, 050, 051, 053 thru 057, 059 thru 064), by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

Council Member Sellers indicated that he met with Mr. Alcini three or four years ago. He said that the Alcini family had the opportunity to make a significant amount of money by developing a standard strip commercial development on their property. Being long time residents who care about the community, they decided to take this more difficult and arduous route to do something that would be far more significant. He felt the Alcini family should be commended and thanked for their patience and vision in pulling these applications together.

#### **14. APPLICATION GPA-05-01: AMENDMENT TO THE CIRCULATION ELEMENT FOR THE MADRONE PARKWAY EXTENSION**

Planning Manager Rowe indicated that the adoption of the circulation element in 2001 included the proposed extension of Madrone Parkway, across the Union Pacific railroad tracks. The extension would serve as a connection between Hale Avenue/future Santa Teresa and Monterey Road, and between Monterey Road and Butterfield Boulevard. He informed the Council that in 2002, the City made an application to the State Public Utilities Commission (PUC) to secure an at grade crossing for the Madrone Parkway extension. At that time, there was also a proposal to construct a parochial high school on 30 acres, opposite the existing Madrone intersection. This project proposed to build the road to the railroad tracks and that the City would complete the crossing to make the connection to Monterey Road. He stated that both the PUC and Union Pacific Railroad strongly objected to the application and cited safety concerns in creating a new at grade crossing. The PUC suggested the City conduct a study to look at alternatives to the Madrone Parkway crossing. In 2004, the City commissioned a study prepared by Fher and Peers. The study identified three alternatives to Madrone Parkway. He informed the Council that staff met with representatives from the PUC, VTA and Union Pacific Railroad recently, in conjunction with a project that VTA is undertaking to extend double tracks from San Jose, south of the Tilton Crossing and picking up again south of Morgan Hill to Gilroy. He informed the Council that

the PUC and Union Pacific have reversed their decision, and that they would allow for an at grade crossing at Madrone Parkway; providing that safety fencing is installed and the City plans for future grade separated crossings. With the change in position by the PUC and Union Pacific, he recommended that the Madrone Parkway crossing be kept in the General Plan. He said that one item the City has to do, in the foreseeable future and possibly long term, is to keep the Tilton Avenue crossing open. He indicated that the City has, in its CIP budget, funding to install safety improvements as was done on Masten Avenue. He recommended the Council conduct the public hearing and that a motion be made to table this item. Staff will return to the Council with the same action that includes an amendment to map 4, circulation plan exhibit, to show the Tilton crossing remaining in place.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Grzan, the City Council unanimously (5-0) **Tabled** this item.*

## ***City Council Action***

### **OTHER BUSINESS:**

#### **15.    POTENTIAL MORATORIUM ON CELL TOWER SITING**

Program Manager Eulo informed the Council that the Planning Division of the Community Development Department has included, in this year's workplan, adopting a new ordinance that would regulate the siting of cell towers. At the September 19, 2005 meeting of the Utilities & Environment Committee, the Committee took up the topic, upon learning that there was a potential for additional cell towers to be sited in the community. The Committee asked staff to bring to the Council a recommendation for a temporary moratorium on the siting of additional cell towers. He informed the Council that there are currently 10 different cell tower facilities in Morgan Hill. There are 2 current applications on file at City hall and that since the staff report has been written, another application has been filed for a conditional use permit (CUP) for an additional cell tower facility. He indicated that the Committee is recommending that the Council request the city attorney prepare a moratorium ordinance.

Council Member Grzan clarified that the moratorium would affect new cell tower installations, and that upgrading existing cell towers would not be affected by a proposed moratorium.

Planning Manager Rowe addressed the three applications submitted to the City. He indicated that one application would add another mono pole to an existing pole located adjacent to Mervyn's. Staff is recommending that the applicant collocate a pole on an existing site where Extended Stay is located as the site was designed to collocate with other providers. The Madrone Parkway water tank area has a tower with a number of installations on it and is 116'9" tall; adjacent to the Paramit property. The third application would be a new antennae mounted to the exterior wall of a motel on Condit Road, near Highway 101.

Council Member Grzan stated that the Utilities and Environment Committee has been studying this concern since the early part of this year. He said that the first proposal brought before the Committee

was more cosmetic in nature, and did not deal with the placement away from public facilities. He said that staff has included cell towers as part of the Planning Commission's workplan to address the concerns raised by the Committee. He noted that earlier this year, the Council read an announcement in the newspaper that one of the local airway vendors wanted to place a tower on one of the City's park sites without notification to the City. The announcement was made as a compliance issue; raising concerns. He indicated that he received a number of e-mails and phone calls from residents about the placement of cell towers in public facilities. He noted that the City does not have an ordinance in place to address the location of cell towers. He said that there is a perceived threat, by the public, on cell towers. He indicated that it is a suggestion of the Committee that the City consider a moratorium on new installation of cell towers until such time the Council has the opportunity to review a policy.

Mayor Kennedy said that additional concern was raised following the Committee's meeting. He stated that he was approached by several individuals who are concerned that the City may be too restrictive, especially if the Council was to adopt an ordinance similar to the one adopted by the City of Gilroy. He suggested the Council consider appointing a citizen task force, including 1 or 2 planning commissioners, to participate so that they can be involved in the process. He recommended the citizen task force prepare a white paper/report to present to the Committee. This would allow the opportunity to air all issues associated with cell towers. He recommended that citizens of the community be included in the task force as well as individuals with knowledge/expertise in this field who are Morgan Hill residents.

Mayor Kennedy opened the floor to public comment.

Scott Dunham, Development Manager for T-Mobile in the South Bay Area, stated that it was his belief that the three applications in process are all T-Mobile applications. He noted that Council Member Grzan mentioned that there was a perceived threat to the community. He requested that Council Member Grzan elaborate on this perceived threat.

Council Member Grzan stated that members of the community believe there is a potential health hazard associated with cell towers.

Mr. Dunham stated that the issue of health concerns is an issue prohibited from being cited by the 1996 Telecommunications Act. He stated that PCS communications has been available in Europe since the 1970s, but that it did not become available in the United States until 1996 as the FCC had been conducting extensive testing before allowing licensing in the United States. At the time the FCC introduced the Telecommunications Act of 1996, after having conducted extensive studies, health concerns were strictly prohibiting from being cited by communities. From an ordinance stand point, he wanted to make sure the Council is aware that while this may be a perceived threat in the community, the FCC has addressed the concern.

As far as aesthetics is concerned, Mr. Dunham stated that T-Mobile wants to be good neighbor in the community. He said T-Mobile tries to use existing structures, flush mounted antennas to the side of hotels which offer substantial height as opposed to building a new pole, and collocating with competitors, where possible, providing that the pole is sound enough to do so. T-Mobile will also build sites in areas requested by jurisdictions in order to accommodate future collocations. He indicated that he would volunteer his services, from a telecommunications stand point, in the drafting of a future

ordinance to include input from the telecommunication side. He said that T-Mobile may be able to provide the City with some ideas on ways it can utilize existing structures. He indicated that T-Mobile has the ability to use stealth technology; building sites that resembles trees, construct antennas on church steeples, etc. He indicated that should a moratorium be put into place, it would place at least a six month delay on the ability to build the three sites. If the ordinance is not completed by spring, it would further delay the approval of the three applications; a concern to T-Mobile. He noted that ATT and Cingular have merged and have become one company, and that T-mobile has to try and keep up with this merger. Keeping T-Mobile from being able to build in a market where Cingular already has a strong presence is highly detrimental to being able to provide fair and adequate competition.

Council Member Sellers noted that the City of Gilroy has adopted an ordinance and that health concerns were often cited as one of the reasons for restrictions. He inquired whether Mr. Durham was familiar with Gilroy's ordinance regulations.

Mr. Dunham responded that he was recently transferred to T-Mobile from another market. Therefore, he has not been in the bay area long enough to become familiar with Gilroy's ordinance.

Audrey Smith indicated that she submitted two of the applications being discussed earlier. She stated she has worked closely with planning staff that have provided a lot of good input. She stated that the two applications are going through the CUP process. She noted that the CUP application has a provision that allows the planning department to request additional documents, as deemed necessary. She informed the Council that planning staff have requested that she conduct a third party health study. She has completed this study and that it is available to the public. She stated that other documents can still be required as it is an open ended provision by the planning department. She said that she would be happy to conduct any additional studies the planning department deems necessary. She felt that a moratorium was a drastic measure to a concern that can easily be addressed with the existing application process.

No further comments were offered.

Council Member Carr noted that a conditional use permit requires review and a public hearing before the planning commission.

Mayor Pro Tempore Tate stated that it was not clear to him what the recommendation does to the three existing applications as they apply to existing locations. He noted that it was being recommended that existing facilities be exempt from the moratorium.

Council Member Grzan clarified that he is recommending that existing sites and modifications to existing sites be permitted under the moratorium. However, new cell site locations would be prohibited until such time the City has formulated a policy on their placement.

Mayor Kennedy expressed concern that existing sites may grow with clutter. He felt that as more and more antennas are added to existing sites, you may end up with a monstrosity of different antennas on a landmark such as El Toro or Knob Hill. He expressed concern with aesthetics in allowing a clutter of antennas.

Council Member Sellers felt that this was an issue that could be addressed by a task force and that the appointment of a task force to study the issue makes sense. He noted the City has three applications that are under the assumption that rules are in place. He recommended that the three applications be allowed to go through the process in fairness and equity. Although he understands the perceived health concern, he too had a difficult time discerning any real health concerns at this time. Should a subcommittee be formed, he recommended they address health and aesthetic concerns, and that an overall policy direction be brought forward for Council consideration. He further recommended that the City look at how an ordinance may be addressed to meet the City's concerns; doing so in a way that is less arduous/difficult for the applicant and staff. He stated that he was reluctant to impose something at this time because it was his belief that it would be of minimal impact. However, he felt that having a full airing and establishing a task force is the right way to proceed.

Council Member Grzan said that by not adopting a moratorium, the City would allow cell towers to be built in the community regardless of public concerns, and what other communities have done. He felt the City may put this community at risk. He indicated that he is proposing a moratorium and that the task force would develop a policy as quickly as possible to present to the Council for consideration. This would demonstrate to the community the Council takes their concerns seriously and that Council members will not make its own assessments on cell towers. He recommended the Council direct the City Attorney return with a moratorium for Council consideration at a later date. He felt the Council would receive a number of phone calls and concerns from the community should the Council not take action at this time.

Mayor Pro Tempore Tate said that he has heard Council Member Grzan state that current/existing sites would be exempt from the moratorium, and that he has heard Mayor Kennedy state that it would only be the current applications that would be exempt. He was unclear as to the recommendation by the Committee. He stated that he likes the idea of exempting new applications from the moratorium, but that they would not be exempt from the CUP process, or the public hearing process. He noted that the applicant would need to address aesthetic issues and concerns.

Council Member Grzan did not believe there were any applications in process for new sites when the Committee first took a look at the issue. The Committee understood that there were applications for modifications to existing sites.

Interim City Attorney Siegel said that should the Council proceed with a motion; the motion will need a lot of certainty as to what the moratorium applies to. He said that definitions of new facilities would need to be clarified. He stated that a moratorium would need to return to the Council in ordinance form. The Council will need to decide whether there will be a public hearing with the initial adoption of the ordinance. He informed the Council that in order to pass a moratorium, a four-fifths vote would be required; not a simple majority vote.

Council Member Carr said that in reading the staff report, it was his understanding that staff would return to the Council with an ordinance in the spring. He inquired whether it was the Committee's concern that there would be a rush on cell tower sitings in the next 6-8 months or was the concern about the public reaction from an operator who incorrectly noticed the public that they were going to place a

cell phone tower in a public park. He did not believe the Planning Commission or the Council would approve such a request.

Council Member Grzan indicated that there are 10 cell tower sites in the community at this time. The City is seeing a 30% increase in cell tower applications; one application is a new site and two applications are for existing sites. He noted the Council has heard from members of the public who have come before the Council and expressed concern about cell towers prior to the announcement that some provider was going to place a cell tower in a city park. He felt the public would like to see a policy put into regarding the placement of cell towers as soon as possible

Mayor Kennedy said that this is primarily a health and safety concern that is driving him to want this issue addressed quickly. As scheduled, it is not known what will take place in the six intervening months. He felt the City needs to do something to ensure the community is protected and the City is doing the right thing during the interim six month period. He felt a moratorium would address this concern.

Interim City Attorney Siegel stated that cities in California and throughout the United States have been preempted on health issues. He stated that the discussion of these issues can jeopardize an otherwise valid moratorium on aesthetics, siting, and other issues. Therefore, the findings will not come from his office for a moratorium concerning health issues because there is preemption on local entities regarding this issue. He agreed that this is a big concern not only in this community and other cities, but that the federal government has tied cities' hands on this issue. He said that under the circumstances that were addressed by Council Member Carr, there is an application that may have caused a low level of concern to be a great concern. He said that there is an examination of the problem to find out whether the concern is real, or if there are other ways to handle the concerns such as changing the ordinance. He noted that cellular phones are a relatively new technology and that there are changing laws that regulate them. He said that a court overturned San Diego's cell phone regulations; stating that they were so complicated that a court could not enforce their regulations. He stated that the Council has absolute authority over cell tower sitings on City property (e.g., parks, libraries, city hall, etc.). Therefore, cell towers may not be allowed by city councils as long as there is not a form of discrimination in the decision making process. This leaves the issue of private sites. He said the Council needs to decide whether a true problem exists that is best solved by placing a moratorium that would shut things down or whether the CUP process is appropriate for now; looking at other cities' ordinances and receiving input from citizens/industry. He noted that it is always the bad project that stems the Council's review and that the Council has to decide whether there truly is a problem that merits shutting down the process. The question is whether the CUP is working in a way that is acceptable to the Council. If the CUP is working and someone needs to review the ordinance, the moratorium may not be the correct process to take. If the CUP is not working, the correct remedy is to stop the process.

Council Member Grzan did not believe the City has a cell tower siting policy in place for City planners to use in the review of cell towers at this time that addresses aesthetics, its placement, etc.

Interim City Attorney Siegel indicated that the CUP is not an administrative permit, but that it requires a discretionary review by the Planning Commission.

Planning Manager Rowe informed the Council that an applicant is required to file a request for a CUP application that requires Planning Commission approval. As the City approved different sites, over time, staff has built on experience that addresses aesthetics and minimizes visibility. Staff has put together an outline for an ordinance that was presented to the Planning Commission in November 2004 that deals primarily with aesthetic issues and would simplify the process for cell sites in non residential areas. The outline uses stealth techniques to minimize visibility. In residential areas, public hearings would be required as part of the CUP process. He stated that as staff has gained experience over the years with the siting of cell towers, staff has addressed the requirements for a report to address the amount of electromagnetic fields that may emanate, and that they are well within the prescribed limits of the FCC guidelines. The City requires that field measurements be conducted on sites where they collocate with existing sites to look at the cumulative affects the site is generating in the field of EMFs. He stated that these conditions, as well as safety provisions that deal with the equipment buildings in terms of fire suppression and other things, have been included as standard conditions and built upon. Absence an ordinance, staff has a list of standard conditions that it imposes on cell towers, including field measurements to make sure the sites are operating safely, within the FCC limits.

Council Member Grzan stated the Committee believes a moratorium is an appropriate action to take in order to give the City time to evaluate a policy as it governs cell tower placement. He inquired if staff recollects whether the Committee's discussion was to regulate new sites or sites that were in process of an application.

Mr. Eulo did not recall the Committee discussing a distinction between new or existing cell tower sites. It was his recollection the Committee's discussion was in general concept of a moratorium to stop additional sitings.

In response to Council Member Carr's question, Planning Manager Rowe did not recall the Planning Commission denying a CUP for a cell tower. He informed the Council that the Planning Commission requested a policy or ordinance before they would entertain a new cell location, thus the reason for presenting an outline for an ordinance last November. He indicated that the Planning Commission felt the outline addressed the aesthetic siting concerns and were supportive if it were incorporated into an ordinance for adoption. He clarified that the Planning Commission uses this outline as an unofficial way of addressing the location of cell towers until such time the Council adopts an ordinance. He said that certain aspects of the outline will be incorporated into the ordinance to be presented to the Planning Commission and City Council.

Mayor Kennedy felt that there were two issues before the Council: 1) would it make sense to revisit this area and appoint a seven member task force consisting of community members, and individuals with expertise in this area? The task force would take a look at this issue, including the Planning Commission in the process. The task force would return with some standards for Council consideration. 2) Does the Council want to establish a moratorium in the meantime or make a policy statement in the interim?

Mayor Pro Tempore Tate said that the idea of a citizen task force was not part of the staff report. He noted the Committee wants to move quickly. Now, he hears a recommendation to appoint a seven member task force and felt this would slow down the process. He heard it stated that Council can use some aspects of the existing process. He did not know how much staff time and demand on a task force



this issue would take. He stated he did not have enough information on the tradeoffs to justify the establishment of a task force versus the track the City is on. He did not know whether it is proposed to exclude current locations or current applications. He stated that he needs a solid recommendation presented.

Mayor Kennedy clarified that he was not suggesting that a task force would move quicker, but that it would involve the public in the process and that it would become an educational process for the Council, the community, staff and the planning commission. He wanted to make sure that whatever actions the Council takes, they are appropriate ones.

Mr. Dunham said that as part of the CUP process, he provides an EMF report regarding the electromagnetic field output of the equipment at the time of application. Once the installation is complete, an EMF report is provided as to the actual measurement at the equipment. He stated that this is a requirement under the CUP process. He stated that radio stations utilize thousands of watts; where cell towers use 120-500 watts, depending on the cell site installed. Therefore, cell antennas are a mere fraction of the energy currently put out by am/fm stations; noting that there is no movement to take radio stations off the air. He said that there is a specific reason for the three applications by T-Mobile; the recent ATT buyout by Cingular. Prior to this, T-Mobile had an agreement with Cingular and other sites for the ability to roam on each others' networks without incurring roaming charges to customers. When Cingular bought out ATT, who had a good presence in the northeastern United States, they no longer needed the deal with T-mobile and cancelled the agreement. Therefore, T-mobile is no longer able to roam in the west on Cingular sites. He stated that it is not a mad rush for locations, but a business reason as the sites they previously used to roam have disappeared. He said that T-Mobile submitted applications underneath the guidelines and rules in place today. To change the rules in midstream is creating a barrier to the market.

Council Member Sellers felt the suggestion of having a separate task force may be the best approach within the confines of the Committee. The Committee could invite Mr. Dunham, planning commissioners, representatives from the public and individuals who have contacted the City Council. Over the course of this meeting and/or subsequent meetings, the Committee can come up with a policy on the best way to speed up the process, using less staff resources; while at the same time giving the public opportunities to participate. He did not believe it made sense to institute a moratorium at this time while the City goes through this process. He felt the Council has the duty to point out that the City has an exhaustive process in place. It is a process that is far more arduous and extensive than most cities have in place. While he understands the concerns for health, he noted that he has not been presented with evidence of this fact. However, evidence has been presented by public agencies that have spent an exhaustive amount of time on this issue. He stated that he would be comfortable using the FCC guidelines as they have the best scientific evidence.

Mayor Kennedy felt that Council Member Sellers' suggestion of taking this item back to the Committee may be a good approach to take.

Council Member Grzan stated that the concern about cell towers is not unique to Morgan Hill, Gilroy, or any community in California/the nation. He requested the City hold off on approving any new cell antennae/tower installations until such time the City has adequate time to review a policy for the

community. He would like to prevent a cell tower being located adjacent to a school, park or public facility where individuals have concerns. He was not advocating or stating that cell towers emit harmful rays. By adopting a moratorium, the Council would send a message to the community that it is taking a conscientious look at this issue and that it would have a cell tower policy in place that would be workable/doable, would address citizen concerns, and meet the needs of Morgan Hill residents. He felt allowing the three applications to proceed would send a message to the community that the City will allow cell towers to be installed, regardless of concerns. He was taken back by the fact the Council does not want to take an assertive approach to this issue because the City does not have a good policy in place. He stated that he would not vote to approve anything other than a moratorium because it was his belief it would meet the City's needs at this time.

Mayor Kennedy felt the Council has heard additional information this evening that addresses some of the concerns and hears differing opinions on the Council. Therefore, he recommended that this item be sent back to Committee. The Committee is to take another look at the issue and see if it can come up with something more specific to bring back to the Council

**Action:** *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Tate, the City Council, on a 4-0-1 vote with Council Member Grzan abstaining, **Referred** this item to the Utility and Environment Committee for further review. The Committee to **Return** to the Council with a specific recommendation.*

Mr. Dunham reiterated his offer to provide industry input in helping the City draft an ordinance. He would also make himself available at any community outreach meeting(s) the Council may wish to have with its constituents.

## **16. LEAGUE OF CALIFORNIA CITIES ANNUAL CONFERENCE RESOLUTIONS**

Mayor Kennedy felt that most of the League of California Cities' resolutions were straight forward except for one that is to be presented on the floor relating to Proposition 76.

Council Member Sellers noted that the Council received additional information on the Dais this evening. The information presented an outline from board members of the League of California Cities. The correspondence states that Proposition 76 is a highly partisan and controversial issue. He noted that it has been a policy of the League of California Cities to abstain from highly partisan issues. He stated that there has been discussion from some factions that they would like to see this Proposition brought up before the Board. Despite the Board's desire to remain out of the issue, it is being requested that they weigh in.

**Action:** *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Tate, the City Council unanimously (5-0) **directed** the City Council's voting delegates to continue to take the "No Position" of the Board of Directors of the League of California Cities regarding Proposition 76.*

**Action:** *It was the consensus of the Council to **agree** with the recommendations presented by the Council Committees.*

## ***City Council and Redevelopment Agency Action***

### **OTHER BUSINESS:**

#### **17. MAYOR, COUNCIL MEMBER, AND REDEVELOPMENT AGENCY BOARD MEMBER COMPENSATION**

Finance Director Dilles indicated that during the budget deliberations, the Mayor suggested that the Council may wish to consider adjusting Council pay that has not been adjusted in some time. On August 17 and August 24, the Financial Policy Committee considered ways in which Council pay might be adjusted. He indicated that the Council currently receives \$300 per month, the salary in place since 1986. He noted that the mayor is entitled to \$800 per month, the amount paid since 1996. He stated that government code provides that for cities ranging in population from 35,000-50,000 the Council pay could be as much as \$400/month. An alternate methodology described in the government code states that the Council could increase pay by 5% per year since the last time the Council members' pay was adjusted. As the Council member's pay was last adjusted in 1986, applying 5% per year from that time, could amount to as much as \$722 per month. He noted that the government code states that the Council can only implement salary changes affective with the beginning of new council member terms. This would be post the November 2006 election. The Financial Policy Committee asked if it would be possible to implement council pay at the beginning of a new term and that it be phased in as each new term became available (e.g., 2006 or 2008). He stated that the answer is no, all Council members' pay would need to be adjusted at the same time and that it could be as early as post November 2006 or the November 2008 election. He informed the Council that there is another area for compensation in Redevelopment Agency Board pay. He stated that the Health and Safety code provides that Redevelopment Agency Board members can be paid as much as \$30 per meeting for a maximum of four meetings a month; up to \$120 per month. He indicated that there is no requirement that this be implemented at a later date. He informed the Council that they can be reimbursed for City expenses as long as the budget accommodates actual expenses incurred.

Mayor Kennedy suggested the Council and Redevelopment Agency Board authorize the \$30 per meeting stipend and that the Council's salary be increased to \$400 per month, effective December 2006, following the next election; increasing the salary every two years based on the cost of living thereafter.

Mayor Pro Tempore Tate noted that the Council recently authorized two new police officers. He felt that there were better ways to use monies. He said that when council members took their elected seats, they did so with the understanding that they would receive token pay. He did not see a justification for increasing council members' or the mayor's salary, and sees a lot of other justifications for the use of City monies. He recommended that Council pay be left as is and not make changes.

Council Member Grzan stated his concurrence with Mayor Kennedy's proposal as it would align compensation with other cities. He felt the proposed increase in compensation would be minimal, and would not have a significant impact with respect to the City's budget and budget issues. He stated that the increase in compensation would help offset other costs such as gasoline, technology or other charges and fees. He indicated that he has not submitted for mileage or other reimbursements since he has been

in office. He noted that the Council approved significant increases to city staff and their budgets this evening. He would support increasing the Council's salary to cover the cost of living and other aspects of serving as a council member as it would be consistent with what other cities are doing.

Council Member Sellers said that given the City's financial situation, he was in between the two thoughts. He does not believe that the \$30 Redevelopment Agency pay makes sense. He recommended that any thought of increasing elected pay wait until after November 2006. He felt there should be a mechanism in place for a minor percentage in increase. He was not supportive of making the pay retroactive because prior Council members did not increase their pay for a reason. Should the Council agree to increase the salary to \$400 per month, he recommended the Council include a mechanism for a minor increase to be considered annually or every other year, subject to the approval of the Council. He did not believe that candidates took elected office to make money. Therefore, it would be unwise for the Council to move too far forward with increasing pay.

Council Member Carr said that this is a difficult question as it is a difficult time for the City, financially. He noted that the contracts approved this evening were modest in means and did not reflect significant increases for anyone. The contracts were the best the Council could do and that it was his belief the Council wanted to do more for its employees, departments and its constituents in terms of services. He did not believe the Council should take an action that would go into affect at this time; this includes pay for attending RDA meetings. He does not support retro active pay increases. He stated he would be willing to consider an increase in pay if it was beyond the November 2006 election as there are some things the Council is doing to help take care of the City's financial situation. If an increase in salary changes the current budget situation approved by the Council, he would not support it.

Mayor Kennedy noted that the existing ordinance establishes the mayor's pay at a flat dollar amount. The government code stipulates that the mayor is entitled to the same amount of pay as council members, plus whatever additional amount the council sets. Should the council move ahead to change salaries, he recommended that the Council be specific as to how much additional pay the mayor should receive. He noted that the ordinance does not spell out the mayor's pay that is equal to council member's pay and the additional mayor's pay. He suggested that a salary increase apply to both the council and the mayor after December 2006.

Finance Director Dilles clarified that the 5% per year, or the cost of living increase cannot occur automatically. It was his belief the Council would need to take action each time the adjustment is to be made, under the law.

**Action:**        *Mayor Kennedy made a motion, seconded by Council Member Grzan, to **Increase** Council Members' and Mayor's pay by the cost of living every two years after the election to take place in November 2006.*

Interim City Attorney Siegel requested clarification on the base the City would start from and from what point would the adjustment be made. Would the first adjustment be with the 2006 election? He indicated that staff would need to return to the Council with a document in written form.

Mayor Kennedy clarified that an increase in pay would be calculated from the cost of living accrued from the date the action goes into affect.

Finance Director Dilles inquired whether the Council was talking about the actual cost of living by an index or whether the Council was talking about the 5%. He noted that the law talks about up to 5%

Mayor Kennedy clarified that his motion addresses a cost of living increase.

Interim City Attorney Siegel said that staff would need to look into whether the CPI exceeds 5% and determine whether the City is capped at 5%. If the City is, staff would return with language that suggests CPI, unless otherwise capped.

Finance Director Dilles clarified that the percentage increase would normally be for a calendar year as stated in the government code. Therefore, the City would be looking at the cost of living increase for the calendar year.

Council Member Carr indicated that in order for the salary to take affect following the November 2006 election, the salary increase would need to be included in the Council's budget to be adopted in June 2006. He inquired whether the Mayor would be opposed to tying the increase to the next budget cycle following the election of November 2006.

Finance Director Dilles clarified that the Council would need to act and approve each increase prior to Council Members' terms starting, whatever the amount. Should the Council wish to have an increase to take affect in December 2006, it would have to take a vote prior to starting the term. He suggested that by October 2006, the Council vote on the increase and identify when the increase in pay would take affect. Should the Council wish to increase the salary again in two years, the Council would need to take a separate action for that increase.

Council Member Sellers suggested that the increase be affective January 2006 with the new Council to vote on the salary increase in December 2007.

Interim City Attorney Siegel said that if an approval is not made before the next election, the increase, as suggested by Council Member Sellers, would not occur until after the 2008-election.

**Action:**        *Mayor Kennedy and Council Member Grzan **amended** their motion to clarify that the increase in council salary is to be affective after the November 2006 election; using the cost of living as a starting point for the calculation when the policy statement goes into affect.*

Council Member Sellers recommended that the motion be amended to stipulate that the increase would be subject to the approval of the Council prior to it taking affect.

Interim City Attorney Siegel felt that Council Member Seller's recommendation would negate the raise until 2008.

Council Member Sellers stated that he would like a mechanism in place such that the next Council would vote on the salary increase.

Council Member Carr noted that a salary increase is reviewed/approved as part of the budget.

**Vote:**            *The motion carried 4-1 with Mayor Pro Tempore Tate voting no.*

Council Member Grzan recommended the Council raise its compensation to \$400 per month and that this amount be used as the base as it is the allowable rate based on the City's current population. He felt that this would be a consistent with what the law allows.

**Action:**            *Council Member Grzan made a motion, seconded by Mayor Kennedy, to **increase** Council pay to \$400 and to use this as the base amount to calculate the cost of living increase. The motion failed 2-3 as follows: AYES: Grzan, Kennedy; NOES: Carr, Sellers, Tate.*

#### **FUTURE COUNCIL-INITIATED AGENDA ITEMS**

City Manager Tewes said that a number of Council members have requested that staff provide background information about the potential for a special meeting of the Council for the purpose of conducting a public hearing in considering applications for the shopping center at the corner of Cochrane and Highway 101. In the materials presented to the Council, staff indicates that this is a complex project and that there are a series of meetings being scheduled by the Planning Commission. Staff believes that the issues would be complex enough that they would require more than the usual staff review, input and analysis. In order to make sure the Council has all the background and documentation needed, staff believes that it cannot bring this item to the Council in the first meeting in November. Staff is suggesting a special meeting be held on November 9. However, he noted that the Council has called a special meeting on November 9 for the purpose of meeting with Council committees and commissions to conduct training on the Council's adopted ethics policy.

Mayor Kennedy suggested that the Council conduct the shopping center workshop from 5:00-7:30 p.m.; pushing the ethics workshop to 7:30-9:30 p.m.

Mayor Pro Tempore Tate objected to delaying the start time for the ethics workshop as the Council has told its committees and commissions that ethics is important to the Council and the Council has already asked them to reserve this time. He did not like the message it would send, should the Council delay the meeting.

Council Member Carr agreed to meet at 5:00 p.m. for the shopping center workshop as it would be easier for the Council to modify its schedule versus requesting every commissioner to modify their schedule.

Council Member Grzan indicated that he could not be in attendance at 5:00 p.m.

City Manager Tewes clarified that this would be a public hearing to consider the various ordinances and resolutions presented by this application. As an alternative, a special meeting could be held on Thursday, November 10. In any event, the City needs to give the public adequate notice of when the Council would be considering these applications.

Council Member Grzan stated that he could not be in attendance earlier than 5:30 p.m.

Council Member Sellers indicated that should a meeting be scheduled for November 10, it is critical that a second hearing date be identified. He agreed the Council cannot push back the public hearing past 7 p.m. Therefore, the only other option would be to carry the public hearing to a subsequent meeting, if necessary. He stated that he was going to suggest holding a meeting on a Saturday morning as this may be a difficult discussion and that a Saturday may give the Council more time to discuss the project.

City Manager Tewes said that the application includes a planned unit development zoning ordinance along with a series of other actions. He noted that ordinances require introduction and adoption at a subsequent meeting. He indicated that the subsequent meeting cannot take place less than five days from the date of introduction.

Interim City Attorney Siegel stated that there has to be five days between introduction and adoption of an ordinance. Holding a meeting on a Saturday would only give the ordinance four days between readings. He informed the Council that there is no legal requirement to have the hearing held by November 16, 2005.

**Action:** *It was the consensus of the City Council to **Call** a Special Meeting for Wednesday, November 9, at 5:00 p.m. for the purpose of conducting a public hearing on the shopping center project. The Ethics workshop is to be held on Wednesday, November 9 at 7:00 p.m., as originally scheduled.*

#### **CONTINUED CLOSED SESSION ITEM**

It was noted that the remaining closed session item could be deferred to a future meeting date.

#### **ADJOURNMENT**

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 9:32 P.M.

#### **MINUTES RECORDED AND PREPARED BY:**

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**IRMA TORREZ, CITY CLERK/AGENCY SECRETARY**